



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

Monday, December 12, 2005
9:30 a.m.

State Contractors Board
Meridian Gold Building
9670 Gateway Drive, #100
Reno, Nevada

Via Videoconference to:

State Contractors Board
2310 Corporate Circle, #200
Henderson, Nevada

MINUTES

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.
A verbatim transcript of the open session proceedings, prepared by a certified court reporter,
is available for inspection at the Commission offices in Carson City and Las Vegas.

Commission Members Present (in Reno):
Caren Jenkins, Esq., Chairman; Rick Hsu, Esq.;
George Keele, Esq.; Jim Kosinski, Esq.

Commission Members Present (in Henderson):
Mark Hutchison, Esq., Vice Chairman; Randall Capurro;
Timothy Cashman; William Flangas

Commission on Ethics Staff Present (in Reno):
Stacy M. Jennings, Executive Director
Kristin N. Luis, Esq., General Counsel
Emily H. Nunez, Office Manager

Commission on Ethics Staff Present (in Henderson):
Adriana G. Fralick, Esq., Senior Investigator & Legal Analyst
Tami E. DeVries, Research Analyst

Chairman Jenkins called the meeting to order at 9:34 a.m., Monday, December 12, 2005.

Agenda Item 1 – Open Session to approve the Minutes of the November 9, 2005 Commission meeting

Chairman Jenkins opened the agenda item. Commissioner Keele moved to approve the minutes of the November 9, 2005 meeting. Commissioner Cashman seconded the motion, which was put to a vote and passed unanimously.

Agenda Item 2 – Open Session to approve the issuance of subpoenas pursuant to NRS 281.475, subsection (2)

Chairman Jenkins opened the agenda item. Executive Director Stacy Jennings read the list of witnesses the Commission intends to subpoena for the hearing of Request for Opinion No. 04-77, *in the matter regarding the conduct of Lynette Boggs McDonald, former City Councilman, City of Las Vegas*.

Subpoenas were requested for: Assemblyman Morse Arberry; Kathy Besser, Chief of Staff, State Treasurer's Office; Audrie Dodge, former assistant to City Councilman Lynette Boggs McDonald; Brian Krolicki, State Treasurer; Kimberly McDonald, sister of Steven McDonald; Steven McDonald, husband of Lynette Boggs McDonald; and Wendell Williams, former state Assemblyman.

Commissioner Keele moved the issuance of the subpoenas as requested. Vice Chairman Hutchison seconded the motion. The motion was put to a vote and passed unanimously.

Agenda Item 3 – Closed Session Pursuant to NRS 281.511(13)

Closed session pursuant to NRS 281.511(13) to receive and deliberate information or evidence concerning the propriety of the conduct of public officers pursuant to NRS 281.511 and NAC 281.109.

Agenda Item 4 – Open Session to take action on proposed stipulation

Open Session to take action on proposed stipulation in the matter of Request for Opinion No. 05-11, regarding the conduct of Michael Montandon, Mayor, City of North Las Vegas.

There was no action on this item.

Agenda Item 5 – Open Session for report of the Executive Director

Chairman Jenkins opened the agenda item. Commission Counsel, Kristin Luis, took a moment to announce, with regret, her resignation from the Commission. Chairman Jenkins accepted Ms. Luis' resignation and thanked her for talents and dedication to this Commission.

Following that announcement, Executive Director Jennings advised the Commission that the Commission Counsel position is now open for recruitment again with State Personnel, and a posting announcement for the position is on the Commission web site. She hopes to have candidates to bring forward to the Commission for interview at the February meeting.

Ms. Jennings also advised the Commission that due to passage of legislation by the 2005 Nevada Legislature, the Commission must make amendments to the *Nevada Administrative Code*. The final regulation adoption hearing will be at the February meeting. Additionally, proposals for legislation for the 2007 legislative session will be brought to the Commission in February or March. Ms. Jennings also reported she is reviewing and updating the agency internal controls. The Commission budget submission is due in September, and the staff is working on clearing up the investigations backlog.

Chairman Jenkins closed the agenda item and moved to agenda item 6.

Agenda Item 6 – Open Session to discuss 2005 legislative changes to NRS 281.551(6)

Open Session to discuss 2005 legislative changes to NRS 281.551(6) as it relates to “willful” violations of ethics statutes and the imposition of civil penalties for such willful violations.

Executive Director Jennings explained that Assembly Bill 64 amended the provisions of NRS 281.551(6) relating to ‘willful’ violations of the Ethics in Government Law effective June 14, 2005. Previously, NRS 281.551(6) provided that ethics violations by public officers or public employees were not willful if said public officer or employee:

1. Relied in good faith upon the advice of the legal counsel retained by the public body or agency;
2. Was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and
3. Took action which was not contrary to a prior published opinion of the Commission.

Legislative intent provided by a review of minutes from the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments indicates it was intended for the statutory amendment to shift the burden from the Commission to the public officer or public employee to establish that all three such actions were taken. Now, a public officer or employee must establish *by sufficient evidence* that he satisfied all three of the requirements set forth in NRS 281.551(6) to overcome the new statutory presumption that his actions are willful, meaning he knew or should have known his actions would violate the state ethics laws.

The Commission participated in considerable discussion regarding potential interpretations of the legislative change in this area. Chairman Jenkins concluded that the Commission must deliberate at each hearing and must consider the evidence before it to determine whether an act is willful. She also advised the Commission they have a clear set of circumstances that tells them when an action is not willful, which is provided by NRS 281.551(6). She closed the agenda item.

A recess was taken at 11:16 a.m., and the meeting reconvened at 11:27 a.m.

Agenda Item 7 – Open Session to discuss the jurisdiction of the Commission on Ethics pursuant to NRS 281.465 and NRS 281.511 and the ability of the Commission to opine on the provisions of NRS 281.210

Chairman Jenkins opened the agenda item. Commission Counsel Kristin Luis provided the Commission with an overview of legislative history and intent as it relates to the Ethics in Government Law. She concluded the Ethics in Government Law, defined as NRS 281.411 through NRS 281.581, should be the sole provisions over which the Commission should opine unless there is express statutory authority indicating otherwise. The only specific statute she is aware of outside of the Ethics in Government Law that specifically references the Commission providing guidance is NRS 281.236.

Commissioner Kosinski moved that the Commission direct the Executive Director and staff to refuse to accept any requests for opinion based solely on an alleged violation of NRS 281.210, and to further direct the staff to include in the 2007 legislative package language which will clarify the provisions of NRS Chapter 281 to limit the Commission's jurisdiction to NRS 281.411 through NRS 281.581, and NRS 281.236. Commissioner Hsu seconded the motion. The motion was put to vote and passed unanimously.

Agenda Item 8 – Open Session for public comment

Craig Walton, emeritus professor of ethics and policy studies at UNLV and the president of the Nevada Center for Public Ethics stepped forward for comment. After providing his thoughts on "willful" ethics violations, Mr. Walton advised that the Nevada Center for Public Ethics is in the process of developing an ethics package for the 2007 Nevada legislative session, and hopes to contact the Commission regarding same.

There were no other members of the public wishing to make comment. The agenda item was closed.

Chairman Jenkins adjourned the meeting at 12:04 p.m.

Minutes transcribed by:

Minutes approved January 11, 2006

Emily H. Nunez, Office Manager

Caren Jenkins, Esq., Chairman